

**IN THE COURT OF III ADDL.JUNIOR CIVIL JUDGE - CUM- XIII ADDITIONAL
METROPOLITAN MAGISTRATE**

ANAKPALLE :: VISAKHAPATNAM DISTRICT

PRESENT: Smt. P.Pradeepa
XIII ADDITIONAL METROPOLITAN MAGISTRATE,
ANAKAPALLE

Friday, this 23rd day of December, 2022

C.C. No. 1835/2022

Between

The State represented by the Sub-
Inspector of Police, Anakapalle Rural Police
Station.

....Complainant.

And

Nakka Pydiraju,
S/o. Pydibabu, aged 38 years, Kapu by caste,
Cultivation, D. N. 1-32,
Papayyasanta Palem Vilalge, Anakapalli mandal
cell No. 8464025333, aadhar No. 240135504682.

...Accused.

This case coming on 22.12.2022 before me for final hearing in the presence of learned A.P.P and Sri. S. Diwakar, Advocate for the accused and having stood over till this day for consideration, this court made the following

JUDGMENT

1. The Sub Inspector of Police, Anakapalle Rural Police Station, laid charge sheet against the accused in Cr.No. 203/2021 for the offence under section 7-B r/w. 8(B) of A.P., Prohibition Act 1995 & Amendment Act 18 of 2020.

2. The brief facts of the case of the prosecution were as follows:

a) On 17.05.2021 at 06.00 hrs, LW4/D. Eswararao and his staff LW1 and LW2 (K. Appala Naidu, Uppalapu Rajkumar) left the police station and while conducting village visiting and when they reached to outskirts of Papayyasanta village Anakapalle mandal at that time the accused was making ID liquor and police caught him with 04 liters of ID Arrack and pulupu 400 liters of raw material and utensil, they caught hold him when he trying to abscond and on enquiry of LW4/D. Eswararao, the accused revealed that he making and selling ID arrack to the persons of surrounding villagers to higher rates, for that LW4/D. Eswararao, seized the contraband and he arrest the accused and seized one plastic cane containing 04 liters of ID alcoholic liquor worth Rs.8000/-, pulupu 400 liters raw material of ID liquor worth Rs.8,000/- and utensils and he collected one liter from raw material of ID liquor and lifted the sample of 250 M.L., ID liquor containing from the cane for chemical analysis as no one come forward to act as mediators, for that LW4/D. Eswararao drafted an occurrence report on 17.05.2021.

b) On 17.05.2021 basing on occurrence report he registered a case in Cr. NO. 203/2021 for the offence U/sec. 7-B r/w. 8 (B) of AP Prohibition Act 1995 & Amendment

Act 18 of 2020.

c) During the course of investigation LW4/D. Eswararao, examined LW1 and LW2 (K. Appala naidu and Upplapu Rajkumar) U/sec. 161 of Cr.P.C., statement and sent the accused to remand. LW4/D. Eswararao, sent the samples to Govt. Chemical Examiner, Regional Prohb & Excise Lab, Visakhapatnam for analysis. LW3/G. Srinivasu, who analyzed the samples and issued opinion vide CE. No. 1281/2021, dated 14.06.2021 with opinion that the sample at S. No. 11235 is illicitly Distilled Liquor, unfit for human consumption and injurious to health. LW5/Ch. Narsinga rao, after completion of investigation filed charge sheet. Hence, the charge.

3. On 28.10.2022 this case was taken on file under section 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020 by this court and numbered as C.C.1835/2022.

4. On 22.11.2022 accused was served with copies of the case as contemplated under section 207 Cr PC.

5. On 12.12.2022 accused was examined under Section 239 Cr PC and the charge framed against him u/s. 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020 was read over and explained to him in Telugu for which accused denied the offence, pleaded not guilty and claimed trail.

6. During the course of trail prosecution had got examined P.Ws.1 to PW3 and got marked ExP1 to P4 and M.O.1. Ex.P.1 is occurrence report. Ex.P.2 is chemical analysis report, ExP3/True copy of destruction order dated 06.08.2022 and ExP4/F.I.R. M.O.1 is seized sample bottle of ID liquor.

7. After closure of prosecution evidence, accused was examined under section 313 Cr.P.C, explaining incriminating circumstances appearing against him, he denied the same and reported no defence evidence. Hence the defence evidence is closed and no documents were marked.

8. Heard arguments for both sides.

9. The following points emerged for determination:

1. Whether the accused is found in possession of 04 liters of I.D. liquor in contravenes the provisions of U/sec. 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020 Act?
2. Whether the search and seizure of contraband was made under the procedure laid down in the code of Criminal Procedure Code?
3. Whether the prosecution has established the guilt of the accused beyond all reasonable doubt for the offence u/sec. 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020 Act?

POINT NO.1:

10. In order to prove the guilt against the accused, the prosecution has examined P.Ws.1 to PW3 and Exs.P.1 to P.4 and M.O.1 marked and relied on their evidence. It is the case of the prosecution that the accused was making ID liquor at Papayyapalem village and found in possession of 04 liters of I.D. Liquor, 400 liters of raw material, utensils which were in the possession of the accused without having valid license in the contravenes the provision of Sec. 7-B r/w. 8(B) of Andhra Pradesh

Prohibition Act 1995 & Amendment Act 18 of 2020.

11. Now let us come to the evidence of prosecution witness, P.W.1 when they conducted the patrolling at Papayyasanta village of Anakapalle Mandal and they found accused were present there with 04 liters of I.D. Liquor, 400 liters of raw material, utensils.

12. PW1 deposed that on 17.05.2021 at about 06.00 AM., himself along with PW3 and LW2/U. Rajkumar while conducting village visiting, they reached to outskirts of Papayyasanta village, the accused was preparing ID arrack to sell the same in the surrounding villagers of Anakaplle, and they found accused in possession of 04 liters of I.D. Liquor, 400 liters of raw material, utensils. The accused confessed before them that for the purpose to sell the same at high price in surrounding villagers he is preparing ID arrack. On that PW3 seized same and out that 250 ML of ID liquor was separated in another bottle to send the same to expert opinion and, PW3 prepared ExP1 occurrence report and handed over the accused along with contract band to PW2.

13. Now let us come to the evidence of prosecution witness i.e., PW2 his evidence is upto filing of charge sheet. PW3 is Investigation Officer, he corroborated the evidence of PW1 and further deposed that he registered ExP4/FIR in Cr. No. 203/2021 for the offence punishable U/sec. 7-B r/w. 8 (B) of APP Act. He sent the accused for remand and he also seized the property and sent MO1 sample to REL for Chemical analysis. He destroyed the S.J wash at the spot itself and later he handed over the charge to PW2.

14. The PW1 to PW3 has cross examined by the defence. PW1 and PW3 admitted in their cross examination that the Papayyasantapalem village consists of nearly 1000 people and they did not secure the presence of revenue officials or panchayat authorities at the time of destruction of raw material. PW1 and PW3 further admitted that they could not secure any mediators at the time of preparation of occurrence report and did not capture any photographs at the time of destruction as well as they did not file any photographs before the court to show that they destroyed the raw material at the scene of offence.

15. To prove the prosecution case no independent witness was neither cited as witness nor got examined before this court. As per the version of P.W.3, he deputed to PW1 for securing mediators and he tried to secure the mediators, but in vain. But he did not mention the names of the person who he tried to act as mediators in this case. Hence there is whisper about the persons to whom they tried to secure as mediators and their particulars. In the absence of said names of mediators to whom P.W.1 tried to secure mediators, the total case of the prosecution, that the accused masking ID liquor and was in possession of raw material of 400 liters for making ID liquor and 04 liters of I.D. Liquor is doubtful.

16. Further there is no reasonable explanation is given by PW3 for non-securing mediators and except the Excise staff, nobody was cited as witnesses in this case, on that the version of prosecution is that due to nobody was present at the scene of offence, due to that reason only, they have drafted the ExP1/occurrence report. As seen from the occurrence Ex.P.1 report, there is no mention of the names to whom they tried to secure

as mediators, it creates a doubt in the mind of the court that whether they genuinely tried to secure mediators or not. When there is no reasonable explanation as well as when there is no clear evidence to show that the contraband was seized from the direct possession of the accused and there is no corroboration with regard to show that the accused is in the possession of said 04 liters of I.D. Liquor, automatically the benefit of doubt goes in favour of the accused. Hence, this court is of opinion that as per the evidence put before this court by the prosecution, the prosecution failed to prove its case i.e., the accused was caught hold plastic bottle which contain 04 liters I.D. liquor, beyond all reasonable doubt hence point no.1 answered in favour of the accused.

POINT NO.2:

17. As per Sec.23 of A.P. Prohibition Act, 1995 on plain reading of said Provision, it does not provide the specific procedure for arrest and seizure. It directs to follow the procedure laid down in the Criminal Procedure Code in respect of arrest of a person and search and seizure. Sec. 100(4) and (5) provided the procedure for search of things and seizure of things. Upon plain reading of Sec. 100(4) and (5) the search and seizure must be in the presence of two or more independent and respectable inhabitants of the locality. As per the evidence of P.W.1 and 2 admittedly the scene of offence is a busy locality, on which there may be several inhabitants are available at the scene of offence to secure them as mediators. In case of the Excise police officials tried to secure one of them as mediators, in case of denial from them, the police officials have power to issue an order in writing asking them to act as mediators as per the procedure laid down in Sec.100 of Criminal Procedure Code. The very purpose of Sec.100 is, to prove that the search and seizure made by the police officials is genuine one and the incriminating material is seized from the direct possession of the accused, but not created one. The presence of independent respectable mediators at the place of search and seizure is always desirable and the presence of mediators of any other locality would not only weaken, but sometime destroy the prosecution case. Justice not only to be done, but also appears to have been done. Investigation must be fair and in accordance with the prescribed procedure of law. The search and seizure in the presence of respectable mediators would be inspired the confidence over the investigation.

18. As per the evidence of P.W.1 and PW2, it is clear that they did not make any efforts to secure any independent mediators either from the locality or from the scene of offence. Ex.P.1 also does not contain that to whom they tried to secure as mediators from that locality. From the above discussion this court is of opinion that the Excise officials did not follow the correct procedure laid down under Sec.100 (4) and (5) of Criminal Procedure Code, at the time of search and seizure. Therefore the search and seizure conducted by the excise officials can't be taken into consideration to come to a conclusion that the search and seizure is conducted in proper lines to prove this case against the accused. Hence the second point also answered in favour of accused.

POINT NO.3:

19. From the evidence of P.W.1 and PW2 failed to explain the boundaries of Scene of offence. In case P.W.1 really present at the scene of offence, as an Investigating

Officer, P.W.1 has bounden duty to give clarity with regard to scene of offence with boundaries. The Investigating Officer wants to prove a case against the accused he has to conduct investigation in all corners. In this case the officials of Excise department even failed to explain boundaries. Further they failed to draw a rough sketch at the scene of offence. It creates any type of doubt in the mind of this court, whether P.W.1 conducted raid on the said date and detained the accused at the scene of offence and seized the contraband from the possession of the accused or not. Hence this court does not incline to rely on the version of prosecution, due to the prosecution failed to prove the case against the accused beyond all reasonable doubt.

20. Upon perusal of entire record, there is no evidence to show that the accused contravenes the provision of Sec.7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020, due to the prosecution failed to prove the case beyond all reasonable doubt, this court inclined to acquit the accused due to basing on circumstances and entire evidence put before this court, the accused is entitled for benefit of doubt.

21. In the result, accused is found not guilty for the offence Under Section 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020, and accordingly he is acquitted under section 248(1) of Criminal Procedure Code for the said offence. The bail bonds of the accused shall be in force for a period of six months under section 437-A of Criminal Procedure Code. M.O.1 shall be destroyed after lapse of appeal time. Accused is directed to appear before the appellate authority if his presence is required before the appellate authority. Accused is further directed to execute a self bond for Rs.10,000/- (Rupees ten thousand only) u/sec.437 A Cr.P.C.

Dictated to Stenographer Grade -III, directly on computer corrected and pronounced by me in the open court, on this the 23rd day December, 2022.

XIII Addl. Metropolitan Magistrate,
Anakapalle.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

For Prosecution:

For Defence:

P.W.1 K. Appalanaidu

None

P.W.2 Ch. Narasingarao

P.W.3 D. Eswararao

EXHIBITS MARKED

For Prosecution:

For Defence

Ex. P.1 : Occurrence Report by PW1

--Nil--

Ex. P.2 : Chemical Analysis Report PW2

Ex. P.3 : True copy of destruction order 06.08.2022 by PW3

Ex. P.4 : FIR in Cr.No.203/2021, 17.05.2021 by PW4

MATERIAL OBJECTS MARKED

For Prosecution:

For defence: Nil.

M.O.1 :seized sample bottle of ID liquor

CALENDAR AND JUDGMENT
IN THE COURT OF THE XIII ADDL. METROPOLITAN MAGISTRATE
:: AT ANAKAPALLE.

CALENDER CASE NO. 1835/2022

Date of offence	:	17.05.2021
Date of Occurrence	:	17.05.2021
Date of taken on file	:	28.10.2022
Date of apprehension of accused	:	17.05.2021
Date of release on bail.	:	18.05.2021
Date of commencement of trial	:	13.12.2022
Date of close of trial	:	22.12.2022
Date of sentence of order	:	23.12.2022
Complainant	:	State represented by Sub-Inspector of Police, Anakapalli Rural Police Station.

Particulars of the accused:

Nakka Pydiraju,
S/o. Pydibabu, aged 38 years, Kapu by caste,
Cultivation, D. N. 1-32,
Papayyasanta Palem Vilalge, Anakaplli mandal
cell No. 8464025333, aadhar No. 240135504682.

Nature of offence	Under Section 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020,
Finding of the court	Found not guilty

Sentence of Order :

In the result, accused is found not guilty for the offence Under Section 7-B r/w. 8(B) of Andhra Pradesh Prohibition Act 1995 & Amendment Act 18 of 2020, and accordingly he is acquitted under section 248(1) of Criminal Procedure Code for the said offence. The bail bonds of the accused shall be in force for a period of six months under section 437-A of Criminal Procedure Code. M.O.1 shall be destroyed after lapse of appeal time. Accused is directed to appear before the appellate authority if his presence is required before the appellate authority. Accused is further directed to execute a self bond for Rs.10,000/- (Rupees ten thousand only) u/sec.437 A Cr.P.C.

*XIII Addl. Metropolitan Magistrate,
Anakapalle*